
**PROJECT DELIVERY AND CONSTRUCTION AGREEMENT
AB 900 JAIL FINANCING PROGRAM**

by and among

**STATE PUBLIC WORKS BOARD
OF THE STATE OF CALIFORNIA**

and

**DEPARTMENT OF CORRECTIONS AND REHABILITATION
OF THE STATE OF CALIFORNIA**

and

**CORRECTIONS STANDARDS AUTHORITY
OF THE STATE OF CALIFORNIA**

and

[PARTICIPATING COUNTY]

Effective Date of _____, 20__

**(FOR A JAIL FACILITY
LOCATED IN THE COUNTY OF _____)**

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**PROJECT DELIVERY AND CONSTRUCTION AGREEMENT
AB 900 JAIL FINANCING PROGRAM
(FOR A JAIL FACILITY
LOCATED IN _____ THE COUNTY)**

This PROJECT DELIVERY AND CONSTRUCTION AGREEMENT (this “Agreement”) is entered into as of _____, 20__, (the “Effective Date”) by and among the STATE PUBLIC WORKS BOARD OF THE STATE OF CALIFORNIA (the “Board”), an entity of state government of the State of California (the “State”), the DEPARTMENT OF CORRECTIONS AND REHABILITATION (the “Department”), an entity of state government of the State, the CORRECTIONS STANDARDS AUTHORITY, a State entity established within the Department (the “CSA”) and the County of _____ (the “Participating County”). For purposes of this Agreement, the Board, the Department, the CSA and the Participating County are referred to collectively as “Parties,” and individually as a “Party.” The Board, the Department and the CSA are referred to collectively herein, as the “Agencies.”

WHEREAS, pursuant to Chapter 3.11 of Part 10b of Division 3 of Title 2 of the California Government Code (the “Law”), the Board is authorized to finance the acquisition, design and construction of a jail facility approved by the CSA pursuant to Section 15820.906 of the Government Code of the State (the “AB 900 Jail Financing Program”); and

WHEREAS, pursuant to California Code of Regulations Title 15, Division 1, Chapter 1, Subchapter 6, ~~only and this Agreement and other agreements relating to this Project,~~ the cost of certain construction activities ~~are potentially (but not acquisition, pre-design and design costs)~~ will be eligible for reimbursement under the AB 900 Jail Financing Program—~~acquisition, pre-design and design costs are not eligible; and~~

WHEREAS, the Participating County has proposed to build a jail facility, as more particularly described in **Exhibit A** attached hereto (the “Project”), to be located on _____, real property controlled by the Participating County through fee-simple ownership (the “Site”); and

WHEREAS, the Participating County intends to lease the Site to the Department pursuant to a Ground Lease Agreement in substantially the form attached hereto as **Exhibit B** (the “Ground Lease”) executed by and between the Participating County and the Department and consented to by the Board; and

WHEREAS, the Department, as lessee under the Ground Lease, and the Participating County intend to enter a Right of Entry for Construction (the “Right of Entry for Construction”) in substantially the form attached hereto as **Exhibit C** concurrently with the execution of the Ground Lease authorizing the Participating County to enter the Site for the purpose of constructing the Project on the Site (the Site and the Project, collectively, the “Facility”), as more particularly described herein; and

WHEREAS, concurrently with the execution of this Agreement, the CSA and the Participating County, with the consent of the Board and the Department, intend to enter into an agreement to assist in complying with CSA's rules and regulations concerning jail construction for the AB 900 Financing Program (the "CSA Agreement"); and

WHEREAS, the Board intends to ~~assist in the oversight and financing~~ oversee and issue lease revenue bonds for the Project, subject to satisfaction of certain conditions and requirements of the Board, including but not limited to establishment of Project scope, cost and schedule; approval of preliminary plans; involvement in working drawing approval, authorization for the Participating County to request construction bids; requesting actions to be taken to obtain one or more interim loans in connection with the Project (the "Interim Loan") and, ~~if the Board determines that it will receive the normal and customary opinions and certificates delivered in connection with an issuance of lease revenue bonds by the Board, the Board may, in its sole, reasonable discretion, subject to section 1.3 below, the Board intends to~~ issue and sell its lease revenue bonds to repay the Interim Loan and provide additional financing for the Project, as necessary (the "Bonds"), ~~subject to the current market conditions and any other considerations the Board determines are appropriate;~~; and

WHEREAS, prior to authorization by the Board of actions to be taken to provide for the Interim Loan, the Department shall have certified to the Board that the Participating County is a participating county as required by Section 15820.90 of the California Government Code and the CSA shall have approved the Project in accordance with Section 15820.901 of the California Government Code; and

~~WHEREAS, such determination by the Department and approval by the CSA is a necessary step in obtaining interim and permanent financing for the Project; however, such determination and approval does not obligate the Board to proceed with the financing and the Board expressly reserves the right, in its sole, reasonable discretion, to decide not to provide financing for the Project; and~~

WHEREAS, interim financing for Board projects has historically been provided by the Pooled Money Investment Board (PMIB) and the agent for sale for all Board bonds is the State Treasurer; and

WHEREAS, concurrently with the issuance of the Bonds, the Department, as lessee under the Ground Lease, intends to enter into a Site Lease whereby the Department, as lessor, shall lease the Site to the Board, as lessee (the "Site Lease"); and

WHEREAS, concurrently with the execution of the Site Lease, the Board, as lessee under the Site Lease, intends to enter into a Facility Lease whereby the Board, as lessor, shall lease the Facility to the Department, as lessee (the "Facility Lease"); rental payments under the Facility Lease shall secure the payment of principal of and interest on the Bonds; and

WHEREAS, concurrently with the execution of the Facility Lease, the Department, as lessee under the Facility Lease, and the Participating County intend to enter a Facility Sublease in substantially the form attached hereto as **Exhibit D**, whereby the Department, as sublessor,

shall lease the Facility to the Participating County, as sublessee (the “Facility Sublease”), for its use, operation and maintenance; and

WHEREAS, in the event the Board ~~determines notis unable~~ to issue the Bonds to finance the Project and the Interim Loan has been provided, the Department shall commit a sufficient amount of its annual support appropriation to repay the Interim Loan and any other interim financing costs associated with the Interim Loan ~~and all associated costs and the State (including without limitation, the Board, the Department and CSA) shall have no obligation to provide any further financing or funding for the Project; and,~~

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements of the Parties set forth herein and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound, the Parties hereby agree as follows:

ARTICLE 1

GENERAL

1.1 General Covenants, Acknowledgements and Agreements of the Parties.

(a) The Parties hereto acknowledge and agree that an authorization by the Board to request the Interim Loan and the issuance of the Bonds by the Board is done in reliance upon, among other things, the promise of the relevant Parties to execute, deliver and perform their respective obligations, as applicable, under the Site Lease, the Facility Lease, the Facility Sublease, a Tax Agreement and Certificate in a form satisfactory to the Board to be executed in connection with the issuance of the Bonds (the “Tax Certificate”), a Continuing Disclosure Agreement, in a form satisfactory to the Board and executed in connection with the issuance of the Bonds (the “Continuing Disclosure Agreement”) and all related certificates, agreements or other documents, including an indenture and supplemental indenture, if any, authorizing the Bonds that the Chair or Administrative Secretary of the Board or a duly authorized designee thereof may deem necessary or desirable to effectuate the sale of the Bonds. Such indenture, supplemental indenture, if any, the Site Lease, the Facility Lease, the Facility Sublease, the Tax Certificate and the Continuing Disclosure Agreement, are collectively referred to herein as the “Bond Documents.”

(b) The ~~Participating County accepts~~ Parties accept and ~~agrees agree~~ to comply with, to the extent respectively applicable to ~~the Participating County~~ them, all terms, provisions, conditions, and commitments of this Agreement, the Project Documents (as hereinafter defined) and the Bond Documents, including all incorporated documents, and that it will do and perform all acts and things permitted by law to effectuate the issuance of the Bonds.

(c) The Participating County, the Department and the CSA agree and acknowledge that the Project is subject to approval and oversight by the Board and the State Department of Finance (“Finance”) consistent with the policy and laws governing the expenditure of a State capital outlay appropriation.

1.2 Approvals, Consents and Actions Necessary to Maintain Eligibility in the AB 900 Jail Construction Financing Program. The Participating County acknowledges its eligibility for Project financing pursuant to the AB 900 Jail Financing Program is subject to and contingent upon the following approvals, consents and actions by the Board and Finance;

(a) A determination by the Board that the Site meets the standard requirements for a site being leased in connection with the issuance by the Board of its lease revenue bonds;

(b) A determination by the Board that the Participating County match as set forth in Article 3 has been satisfied as required by the Law and the source of the Cash (hard) Match (as hereinafter defined) and any associated security or terms related thereto has been determined by the Board to be compatible with the financing of the Project pursuant to the AB 900 Jail Financing Program;

(c) The Board has established the scope, cost and schedule for the Project consistent with the Participating County's initial proposal submitted to the CSA and the Participating County has agreed that the Project shall be constructed and completed in accordance with such Project scope, cost and schedule established by the Board, except to the extent any modifications thereof may be approved by the Board through the State's standard capital outlay process;

(d) ~~Consent is obtained from the~~ The Board ~~to~~ has approved the Ground Lease, the Right of Entry and the Facility Sublease;

(e) Both the Board and Finance have approved the Preliminary Plans for the Project. As used herein "Preliminary Plans" shall mean a site plan, architectural floor plans, elevations, outline specifications, and a cost estimate, for each utility, site development, conversion, and remodeling project, the drawings shall be sufficiently descriptive to accurately convey the location, scope, cost, and the nature of the improvement being proposed;

(f) Finance has approved the Working Drawings for the Project and authorized the Participating County to proceed with soliciting competitive bids for construction of the Project. As used herein "Working Drawings" shall mean a complete set of plans and specifications showing and describing all phases of a project, architectural, structural, mechanical, electrical, civil engineering, and landscaping systems to the degree necessary for the purposes of accurate bidding by contractors and for the use of artisans in constructing the project;

(g) The Department has provided the Board the certification required by Government Code §15820.90, which certification the Department intends to provide upon satisfaction of the required statutory and regulatory conditions;

(h) The Board has adopted a Resolution authorizing steps be taken to seek the Interim Loan together with declaring its intent to reimburse any such Interim Loan with the proceeds from the Bonds;

(i) A determination by the Board it will receive with respect to the Bonds the normal and customary opinions and certificates delivered in connection with an issuance of lease revenue bonds by the Board; and

(j) The sale of the Bonds.

~~1.3 AB 900 Jail Lease Revenue Bond Financing Program is Not a Grant Program. The State financing for the AB 900 Jail Financing Program is not a grant program and predicated on the Parties recognize that if Board's ability to issue Bonds for the Project. The Board, exercising reasonable discretion, determines not to provide the authorization acting in good faith, intends to seek authorize the request for the Interim Loan or, and, subject to issue the Bonds to assist in financing the Project, the Participating County is not entitled to receive the Maximum State Financing (as hereinafter defined) or any other financing or funding from the State approvals, consents, and actions set forth in section 1.2, to issue Bonds for the Project. The State's participation in financing the Project as part of the AB 900 Financing Program is entirely conditioned on the Board's decision to issue the Bonds and its ability to complete the sale thereof.~~

~~The State (including without limitation the Board, the Department and the CSA) shall not be obligated to provide any financing for the Project if the Board, in its sole, reasonable discretion, determines, for any reason, it should not or will not be able to provide the authorization to seek an Interim Loan or issue and sell the Bonds to finance the Project, including, but not limited to: lack of suitability of the Project's configuration or Site for a lease revenue bond financing or local funding that is incompatible with an issuance of lease revenue bonds by the Board, the current condition of financial markets or the state's ability to obtain access to the financial markets at reasonable rates as determined by the Board, adverse outcomes to any legal challenges, or inability to receive opinions and certificates customarily delivered in connection with its issuance of lease revenue bonds.~~

1.3 Notwithstanding the foregoing, the Board, the Department and the CSA will make reasonable and good faith efforts to assist in gaining assurance that the Site, the Project, the Participating County's ultimate use of the Project and the Cash (hard) Match (as hereinafter defined) are developed and implemented in such a way to facilitate the financing of the Project through the issuance and sale of the Bonds. ~~However, these efforts by the Board, the Department and the CSA do not constitute and shall not be construed as any guarantee or commitment by the State to provide all or a portion of the Maximum State Financing for the Project.~~

~~The Parties hereto by execution hereof acknowledge that: (1) the Board is not obligated to authorize a request for the Interim Loan or to issue the Bonds unless the Board, in its sole, reasonable discretion, determines the Project is eligible for such financing at the time of the request for such loan and at the time of issuance of the Bonds, as applicable; (2) prior to authorization by the Board of actions to be taken to provide for the Interim Loan Prior to the Board's authorization to request the Interim Loan, the Department shall have certified to the Board that the Participating County is a participating county as required by Section 15820.90 of the California Government Code and the CSA shall have approved the design and construction~~

of the Project in accordance with Section 15820.901 of the California Government Code; ~~and (3) such determination by the Department, and approval by the CSA, does not obligate the Board to assist in financing the acquisition, design and construction of the Project, as the Board shall, in its sole, reasonable discretion, determine if the Project is eligible for financing through the Interim Loan and/or the issuance and sale of the Bonds. *The Parties hereby expressly agree that if the Board decides not to provide financial assistance for the Project none of the Board, the State, the Department or the CSA is obligated to reimburse the Participating County for any costs incurred with respect to the Project.*~~

Notwithstanding the Board's good faith efforts to authorize and provide financing for the Project, the State (including without limitation the Board, the Department, and the CSA) shall not be obligated to issue Bonds for the Project or authorize the Interim Loan request upon the Board's good-faith determination that such financing is not feasible or appropriate, based upon any one or more of the following factors: the lack of suitability of the Project's configuration or site for lease revenue bond financing, local funding that is incompatible with the issuance of lease revenue bonds by the Board, adverse market conditions, adverse outcomes to legal challenges, inability to obtain access to the financial markets or inability to obtain reasonable rates, inability to receive opinions and certificates customarily delivered in connection with the issuance of lease revenue bonds, or another occurrence or state of affairs that would make it objectively infeasible or inappropriate for the Board to issue Bonds or authorize the Interim Loan request.

In the event the Board determines that it is not feasible or appropriate to issue Bonds or to authorize the Interim Loan request, the Participating County is not entitled to receive the Maximum State Financing (as hereinafter defined) or other State funding for the Project, and shall not receive reimbursement from the State for any Project costs. However, in the event the Board is unable to issue the Bonds to finance the Project and the Interim Loan has been provided, the Department shall commit a sufficient amount of its annual support appropriation to repay the Interim Loan and any other interim financing costs associated with the Interim Loan and all associated costs.

1.4 The Department and the CSA Act as Liaison of Board and Finance to Participating County. The Parties hereto acknowledge that obtaining the approvals and consents of the Board and/or Finance and the provision of documents to the Board and/or Finance as set forth in this Article I and otherwise herein shall be a responsibility of the Department and CSA. The Department and the CSA will act as liaisons between the Participating County and the Board and Finance, and on their own behalf and behalf of the Board and Finance, will work with the Participating County to obtain such consents and approvals, and to provide such documents to the Board and Finance, as applicable.

1.5 Representations and Warranties of the Participating County.

(a) Under the provisions of the State Constitution, the applicable State statutes, and applicable jurisprudence of the State, the Participating County has the power to

enter into this Agreement, to be bound hereby, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(b) The Participating County has taken all actions and has obtained all consents necessary to enable the Participating County to enter into this Agreement, to be bound hereby, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(c) The person executing and delivering this Agreement on behalf of the Participating County has been duly authorized and empowered to do so.

(d) The execution and delivery of this Agreement on behalf of the Participating County will bind and obligate the Participating County to the extent provided by the terms hereof.

(e) There exists no litigation or other proceeding pending or threatened against the Participating County that, if determined adversely, would materially and adversely affect the ability of the Participating County to consummate the transactions contemplated hereby or to perform its obligations hereunder.

(f) The execution and delivery of this Agreement and the Ground Lease, the Right of Entry for Construction, the CSA Agreement and the Facility Sublease, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Participating County is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Participating County, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement, the Ground Lease, the Right of Entry, the CSA Agreement or the Facility Sublease, or the financial condition, assets, properties or operations of the Participating County.

1.6 Representations and Warranties of the Board.

(a) Under the provisions of the State Constitution, the applicable State statutes, and applicable jurisprudence of the State, the Board has the power to enter into this Agreement, to be bound hereby, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(b) The Board has taken all actions and has obtained all consents necessary to enable the Board to enter into this Agreement, to be bound hereby, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(c) The person executing and delivering this Agreement on behalf of the Board has been duly authorized and empowered to do so.

(d) The execution and delivery of this Agreement on behalf of the Board will bind and obligate the Board to the extent provided by the terms hereof.

(e) There exists no litigation or other proceeding pending against the Board (with service of process having been accomplished) that, if determined adversely, would materially and adversely affect the ability of the Board to consummate the transactions contemplated hereby or to perform its obligations hereunder.

1.7 Representations and Warranties of the Department and CSA.

(a) Under the provisions of the State Constitution, the applicable State statutes, and applicable jurisprudence of the State, the Department and the CSA has the power to enter into this Agreement, to be bound hereby, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(b) The Department and the CSA has taken all actions and has obtained all consents necessary to enable the Department and the CSA to enter into this Agreement, to be bound hereby, to consummate the transactions contemplated hereby and to perform its obligations hereunder.

(c) The persons executing and delivering this Agreement on behalf of the Department and the CSA has been duly authorized and empowered to do so.

(d) The execution and delivery of this Agreement on behalf of the Department and the CSA will bind and obligate the Department and the CSA to the extent provided by the terms hereof.

(e) There exists no litigation or other proceeding pending against the Department and the CSA (with service of process having been accomplished) that, if determined adversely, would materially and adversely affect the ability of the Department and the CSA to consummate the transactions contemplated hereby or to perform its obligations hereunder.

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(f) The execution and delivery of this Agreement and the Ground Lease, the Right of Entry for Construction, the Site Lease, the Facility Lease, the CSA Agreement and the Facility Sublease, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the CSA or the Department is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the CSA or the Department, which conflict, violation, breach, default, lien, charge or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement, the Ground Lease, the Right of Entry for Construction, the CSA Agreement or the Facility Sublease, or the financial condition, assets, properties or operations of the CSA or the Department.

1.8 Compliance with Terms and Conditions of the Project Documents. The ~~Participating County agrees~~ Parties agree to comply with all terms and conditions relating to the respective party of this Agreement, the CSA Agreement, the Ground Lease, the Right of Entry for Construction and all exhibits and schedules attached hereto and thereto relating to the ~~Participating County~~ Party (collectively, the “Project Documents”), as well as all applicable laws including, without limitation, the Law and those laws, regulations and guidelines set forth in the CSA Agreement. ~~The CSA agrees to comply with all terms and conditions of this Agreement and the CSA Agreement and all exhibits and schedules attached hereto and thereto. The Department agrees to comply with all terms and conditions of the Project Documents relating to the Department.~~

1.9 Conflicts Between Terms of Documents. In the event of any inconsistency in the Project Documents, except as otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order: 1) this Agreement; 2) the Ground Lease, 3) the CSA Agreement and all exhibits and schedules attached thereto, and 4) the Right of Entry for Construction. In the event the Bonds are issued, any inconsistency between the Project Documents and the Bond Documents shall be resolved by giving precedence to the Bond Documents. To the extent the Parties mutually agree that a provision of a particular document should control with respect to an inconsistency between that document and another document or documents, notwithstanding the other provisions of this section, such provision shall control.

1.10 Indemnity. As required by ~~California~~ Government Code Section 15820.901(d), the Participating County hereby agrees ~~that it shall~~ to indemnify, defend and save harmless the State, including but not limited to the Board, ~~the~~ Department and ~~the~~ CSA, and each of their respective officers, governing members, directors, officials, employees, subcontractors, consultants, and agents (collectively, “Indemnitees”) for any and all claims and losses arising at any time out of the acquisition, design ~~and~~ construction ~~of the Project, including, but not limited to all demands, causes of actions and liabilities of every kind and nature whatsoever arising out of, related to, or in connection with (a) any breach of this Agreement by the Participating~~

~~County; (b) operation, maintenance, use and occupancy of the Project; and (c) any acts or omissions of any contractor hired by the Participating County or its agents or subcontractor hired by such contractor (collectively, "Claims"). The Participating County's obligation to indemnify, defend and save harmless the Indemnites shall extend to all Claims arising, occurring, alleged, or made at any time, including prior to, during, or after the period that this Agreement is in full force and effect. The Participating County's obligation to indemnify, defend, and save harmless the Indemnites shall apply regardless of any active and/or passive negligent act or omission of the Indemnites, but the Participating~~ participating County shall not be obligated to provide indemnity or defense ~~for an Indemnitee wherein~~ where the claim arises out of the gross negligence or willful misconduct of the Indemnitee. ~~The indemnification~~ Indemnites. These obligations of the Participating County set forth in this Section shall survive any termination of this ~~Agreement~~ agreement.

1.11 Assignment or Subletting of Facility.

(a) *Assignment of Rights and Interest under this Agreement.* Except as otherwise contemplated hereunder, the Participating County may not sublicense, assign, or otherwise confer upon any other person or entity its rights or interests under this Agreement, nor may the Participating County delegate any of its duties or responsibilities required by this Agreement, whether by operation of law or otherwise, without the express, prior written consent of the Agencies, ~~which consent may be granted or withheld in the Agencies' sole and absolute discretion,~~ the rights and obligations hereunder imposed being personal to the Participating County.

(b) *Assignment or Subletting of Facility.* The Participating County and the Department hereby covenant and agree that none of the Ground Lease, the Facility Lease or the Facility Sublease nor any interest of such Parties thereunder shall be sold, mortgaged, pledged, assigned, or transferred by the Parties thereto by voluntary act or by operation of law or otherwise; provided, however, that the Facility may be subleased in whole or in part by the Participating County with the prior written consent of the Department and the Board to the form and substance of such sublease, which consent shall not be unreasonably withheld, and, provided further that, any such sublease shall be subject to the following conditions:

(i) Any sublease of the Facility by the Participating County shall explicitly provide that such sublease is subject to all rights of the Department and the Board under the Facility Sublease, including, the right to re-enter and re-let the Facility or terminate such lease upon a default by the Participating County; and

(ii) At the request of the Department or the Board, the Participating County shall furnish the Department, the Board and the State Treasurer with an opinion of ~~nationally-~~ recognized bond counsel acceptable to the Board to the effect that such sublease will not, in and of itself, cause the interest on the Bonds to be included in gross income for federal income tax purposes.

(c) *Restrictions on Private Use of Facility.* The Participating County acknowledges that its ability to assign or sublet the Facility is subject to the provisions of Section 6.1.2 hereof.

1.12 Relationship of Parties. The parties hereto acknowledge and agree that, to the extent expressly provided in this Agreement, the relationship of the Participating County to the Agencies is that of an agent to the Agencies and that the Participating County is principally responsible for the acquisition, design, construction, maintenance, and operation of the Project. Other than as set forth herein, nothing in this Agreement shall create between the Participating County and any of the Agencies the relationship of joint venturers, partners or any other similar or representative relationship, and the Participating County shall not hold itself out as an agent (except as expressly provided herein), representative, partner, member or joint venturer of the Agencies. The Participating County shall not make for or on behalf of the Agencies, or subject the Agencies to, any contract, agreement, warranty, guaranty, representation, assurance or other obligation, which has not been approved in advance in writing by the applicable Agency. This Agreement is for the sole and exclusive benefit of the Parties hereto and their respective successors and assigns, and no third party (including without limitation the owners of the Bonds) is intended to or shall have any rights hereunder.

ARTICLE 2

TERM AND TERMINATION OF AGREEMENT

2.1 Term of Agreement. This Agreement shall commence on the Effective Date and shall terminate upon the later of (i) completion of the construction of the Project or (ii) if the Board ~~determines to issue~~ ~~issues~~ the Bonds, execution and delivery of the Facility Sublease, unless terminated earlier as provided in Section 2.2. The provisions of certain sections hereof as indicated by the express terms thereof will survive termination of this Agreement.

2.2 Termination of Agreement.

(a) *Termination by the State.* The Department or the CSA, with the consent of the Board, or the Board may terminate this Agreement in the event any of the following occurs:

(i) The Participating County's breach of a material term of this Agreement, any Project Document or any Applicable Laws (as defined in the CSA Agreement) provided the Participating County has not cured such breach in all respects within thirty (30) days from notice of said breach, which cure period may be extended for a reasonable time with the consent of the Agencies if the Participating County demonstrates that such additional time is required to cure such breach in a diligent and commercially reasonable manner;

(ii) Substantive alteration of the Board approved scope, cost or schedule for the Project as set forth in **Exhibit A** without the prior written approval of the Board;

(iii) Failure to execute the Ground Lease or the Right of Entry for Construction;

(iv) Failure to provide the Participating County Funding (as hereinafter defined) when and as required under this Agreement, the Law or any ~~Project Agreement~~project agreement to which the Participating County is a party;

(v) In the event the Department and/or the CSA terminates the CSA Agreement, with the consent of the Board; or

(vi) ~~Mutual agreement of In the Parties~~event the Board determines the Participating County is no longer eligible for Project financing under the AB 900 Jail Financing Program as set forth in section 1.2 hereof.

(b) ~~Termination by the Participating County.~~ The Participating County may, prior to the State providing any amount of financing, terminate this Agreement as in the event any of the following occurs:

~~(vi)(i)~~(i) The State's breach of a ~~specified date, evidenced in writing;~~material term of this Agreement, any Project Document or any Applicable Laws (as defined in the CSA Agreement) provided the State has not cured such breach in all respects within thirty (30) days from notice of said breach, which cure period may be extended for a reasonable time with the consent of the Participating County if the State demonstrates that such additional time is required to cure such breach in a diligent and commercially reasonable manner;

(ii) ~~Failure of the State to execute the Ground Lease or the Right of Entry for Construction;~~

~~(vii)(iii)~~(iii) In the event the Board determines the Participating County is no longer eligible for Project financing under the AB 900 Jail Financing Program as set forth in section 1.2 hereof.

(c) ~~Agreement.~~ The Parties may terminate this Agreement by mutual agreement.

~~(b)(d)~~(d) Notice of Termination. Prior to terminating this Agreement under the provisions of this Article 2, the ~~Department, the CSA and/or the Board~~Parties shall provide to each other, as applicable, ~~shall provide the Participating County~~ at least thirty (30) calendar days written notice, stating the reason(s) for termination and effective date thereof.

~~(e)(e)~~(e) No Impairment. Nothing in this Article 2 in any way alters or limits the authority of the Department, the CSA or the Board to withhold all or a portion of the Maximum State Financing (as hereinafter defined) in accordance with law or otherwise as permitted hereunder or any other right or remedy available to the State at law or in equity for breach of this Agreement.

ARTICLE 3

COST SHARING OF THE PROJECT

3.1 Financing Eligibility of the Project.

(a) *General.* Subject to the terms and provisions hereof, the costs for construction of the Project shall be shared by the State and the Participating County with the State providing financing up to a maximum of _____ Dollars (\$_____) (“Maximum State Financing”) and the Participating County providing the Cash (hard) Match (as defined below) funding and the In-Kind (soft) Match (as defined below) funding (collectively, the “Participating County Funding” and together with other Participating County-borne project costs not included as Participating County Funding and the Maximum State Financing, the “Total Project Costs”). Provided, however, that the Board may provide all or a portion of the Maximum State Financing ~~is provided~~ for Project costs at ~~the sole, reasonable~~its discretion ~~of the Board~~ as set forth herein. The sources for the Maximum State Financing shall be limited to the proceeds of the Interim Loan, and the proceeds of the Bonds. If Bonds are issued and sold, the proceeds will be used to repay the Interim Loan and to provide additional financing for the Project as appropriate. If the Bonds are issued and sold, in no event or circumstance shall the State or Agencies be obligated to pay the Participating County under this Agreement or any other Project Document any amount in excess of the Maximum State Financing.

(b) *Cash (hard) Match.* Subject to all terms and provisions of this Agreement, the Participating County agrees to appropriate and spend cash (hard) matching funds for the Project as provided in the CSA Agreement (“Cash (hard) Match”). **Exhibit E-1** is a detailed description of and certification related to the source or sources of the Cash (hard) Match and any associated security or terms related thereto as approved by the CSA and the Board, which detail and assurance of has been deemed sufficient by the Board to determine that the use of such funds as the Cash (hard) Match is compatible with the financing of the Project pursuant to the AB 900 Jail Financing Program. Any modifications to the source or sources of the Cash (hard) Match or the associated security and terms related thereto as described in **Exhibit E-1** must be approved by the CSA and the Board. The Participating County shall ensure that all Cash (hard) Match is encumbered prior to Finance approval of proceeding to bid the Construction Contract (defined below).

(c) *In-Kind (soft) Match.* Subject to all terms and provisions of this Agreement, the Participating County agrees to provide in-kind (soft) match for the Project as provided in the CSA Agreement (“In-kind (soft) Match”). The Participating County has provided in **Exhibit E-2** a detailed description of the In-kind (soft) Match for the Project as approved by the Department, the CSA and the Board. Any modifications to the In-kind (soft) Match as described in **Exhibit E-2** must be approved by the Department, the CSA and the Board.

3.2 Excess Project Costs. In no event shall any Project scope, cost, budget or schedule changes be authorized by the Participating County which would cause the amount of Total Project Costs to be exceeded unless the Participating County covenants to fund such excess with lawfully available funds and the Participating County first obtains the consent of the

Agencies. The Participating County is solely responsible for any and all cost, expenses or fees of the Project which exceed the Maximum State Financing and the Participating County covenants to use its best efforts to promptly appropriate sufficient amounts to cover such cost, expenses or fees. The Participating County waives any and all claims against any of the Agencies or the State in the event that Total Project Costs exceed the amount initially established by the Board.

3.3 Project Cost Savings. To the extent there exists Project cost savings upon completion of the Project the amount of such savings shall be shared by the Board and the Participating County on a pro rata basis determined by the percentage of the total amount of Project costs financed by the State and Cash (hard) Match provided by the Participating County, respectively.

ARTICLE 4

PROJECT SCOPE, COST AND SCHEDULE

4.1 The Project. See **Exhibit A** for a description of the scope and cost of the Project, including a narrative description of the Project, budgeted costs related to the Project and a schedule for completion of design and construction of the Project.

4.2 Modification of Project Scope, Cost or Schedule. No material change or other modifications to the Project scope, cost or schedule may be made by the Participating County without prior written permission of Finance and the recognition by the Board (“Scope Change Request”). Minor modifications to the project do not require Finance approval and Board recognition, but must be documented and reported on routine progress reports to the CSA as set forth in the CSA Agreement. Without limiting the foregoing, the Participating County shall notify the Department, the CSA, and the Department shall make a Scope Change Request to the Board upon any of the following events or circumstances:

- (a) More than minor changes which affect the design, project configuration, cost or schedule of the Project;
- (b) A delay or change in the substantial completion or final completion dates for the Project;
- (c) A more than minor change to the design, location, size, capacity or quality of major items of equipment;
- (d) A change in approved budget categories, or movement of dollars between budget categories as indicated in the Board approved scope cost and schedule as identified in **Exhibit A**.

The Participating County agrees that it will give prompt notification in writing to the CSA of the occurrence of any of the above events and promptly report, in writing, to the CSA any modifications to the Construction Contract (as hereinafter defined) with respect to the Project. The CSA will provide the aforementioned notices and reports to the Board. The Participating County agrees further that, for purposes of the immediately preceding clause (a)

and (c), if unsure whether a particular change is minor it will discuss the appropriate characterization with CSA.

4.3 Excess Project Costs. In no event shall any scope, cost or budget changes be authorized which would cause the amount of Total Project Costs to be exceeded unless the Participating County covenants to fund such excess with lawfully available funds and with the consent of the Agencies and so appropriates such funding.

ARTICLE 5

BIDDING AND CONSTRUCTION PHASE OF PROJECT

5.1 Construction Covenant of Participating County. The Participating County acting as agent of the Board and the Department, hereby covenants and agrees to provide and perform or caused to be performed all activities required to acquire, design and construct the Project on behalf of the Board in accordance with the Participating County's established policies and procedures for the construction of major capital projects such as the Project. The Participating County shall be responsible to contract for all pre-design, design and construction services, and shall manage the day-to-day design and construction of the Project. The Participating County shall cause the design and construction of the Project to be consistent with the requirements, limitations, and other terms of this Agreement, the other Project Documents, the Law and all applicable laws. The Participating County shall also manage all aspects of the development and construction of the Project in accordance with the Project Documents.

5.2 Procurement and Enforcement of Construction Contract. The Participating County shall follow and adhere to all pertinent bidding rules and policy applicable to Participating County construction projects of this type and size. ~~Should~~If there ~~be any~~is an ambiguity ~~(however slight)~~ as to the applicability of certain contracting rules and/or policies to the Project, Participating County will seek advice from its counsel and ~~make every effort to~~ follow that advice and use its best efforts to enforce, the general construction contract ("Construction Contract") between the Participating County and the contractor selected by the Participating County.

5.3 Completion of the Project. The Participating County acknowledges it is obligated to undertake and complete the construction of the Project in compliance with all of the applicable terms and conditions of the Project Documents and the Participating County agrees to use its best efforts to cause the completion of construction of the Project in compliance with the applicable terms and conditions of such documents. The Participating County agrees to complete the Project in accordance with this Agreement and consistent with the scope, cost and schedule established by the Board and attached hereto in **Exhibit A**, as such scope, cost and schedule may be modified with the approval of Finance and the recognition of the Board.

5.4 Project Access. At all times during construction of the Project and after final completion, the Participating County shall provide to employees, subcontractors, and consultants of the Agencies reasonable unrestricted access to observe, monitor and inspect the Project. The Agencies' access to observe, monitor and inspect shall include the right to review all documents and files relating to the Project, as well as construction on the Site, including all tests and inspections relating to design or construction of the Project.

5.5 Insurance. The Participating County shall, in the Construction Contract, require the contractor to procure and maintain a 'builder's risk' insurance policy in form and substance and with a carrier satisfactory to the Board until the Project is delivered to the Participating County pursuant to the terms of the Construction Contract. If such builder's risk policy terminates in accordance with its terms, or is otherwise terminated, prior to execution of the Facility Sublease, the Participating County shall give notice to the Agencies 45 days prior to any such termination. If the builders risk policy terminates in accordance with its terms prior to execution of the Facility Sublease the Department shall, at its expense, procure and maintain property casualty insurance in an amount sufficient to fully repay all Interim Loan costs associated with the Project, the proceeds of which the Participating County agrees will be used to repay the Interim Loan. The property casualty insurance shall be in a form satisfactory and with carriers acceptable to the Board. The Participating County shall, at its expense, procure and maintain insurance in a form satisfactory and with carriers acceptable to the Board and the CSA and shall comply with the insurance requirements to be set forth in the Facility Sublease, a form of which is attached hereto as **Exhibit D**. Prior to the execution of the Facility Sublease by the Participating County and the Department, the Board may make such changes and modifications to such insurance requirements as in its sole, reasonable discretion it deems necessary or appropriate.

Any and all policies related to the Project shall name the Board, the Department and the CSA as additional insured parties and the Participating County shall deliver to the Agencies a certificate or certificates of insurance authorized by the insurers describing the insurance and stating that it is in full force and effect.

ARTICLE 6

CERTAIN OBLIGATIONS POST PROJECT COMPLETION

6.1 Private Use of the Project.

6.1.1 *Provision of Information Regarding Private Use.* The Participating County acknowledges that under the terms of the Facility Sublease, a form of which is attached hereto as **Exhibit D**, the Participating County will covenant to provide updated information to the Board, the Department and the State Treasurer annually regarding private use, if any, of the Project.

6.1.2 *Restriction on Private Use of Bond Financed Project.*

(a) The Participating County acknowledges that under the terms of the Facility Sublease, a form of which is attached hereto as **Exhibit D**, the Participating County will covenant to restrict private use of the Project as required by the terms thereof.

6.2 No Liens. The Participating County acknowledges that except as permitted under the terms of the Facility Sublease, a form of which is attached hereto as **Exhibit D**, the Participating County will covenant not to allow any liens on the Facility.

ARTICLE 7

RECORD RETENTION

7.1 Establishment of Official Project File. The Participating County shall establish an official file for the Project (the "Official Project File"). The file shall contain adequate documentation of all actions that have been taken with respect to the Project, in accordance with generally accepted government accounting principles and the requirements for record retention for capital projects constructed with the proceeds of tax exempt bonds. The Participating County will provide a copy of such file to the Department upon termination of this Agreement. The documents to be retained shall include, but is not limited to contracts, payment of invoices, transfer of funds and other related accounting records.

7.2 Preservation of Records. The Participating County agrees to protect records adequately from fire or other damage. When records are stored away from the Participating County's principal office, a written index of the location of records stored must be on hand and ready access must be assured. All the Participating County records contained in the Official Project File must be preserved a minimum of three years after the last date on which no Bonds are outstanding. These records shall be subject at all reasonable times to inspection, examination, monitoring, copying, excerpting, transcribing, and audit by the CSA or designees, the Board, by state government auditors or designees, or by federal government auditors or designees. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the relevant time period set forth in the second sentence of this paragraph, the related records must be retained until the completion of the action and resolution of all issues which arise from it if such date is later than the end of the aforementioned three-year period.

~~Article 8~~

GENERAL TERMS AND CONDITIONS

~~The general terms and conditions published by the Department of General Services at http://www.documents.dgs.ca.gov/ols/GTC_307.doc and applicable to all State of California contracts are hereby incorporated by reference into this Agreement. In signing below, the Participating County's authorized representative represents and warrants that the Participating County has read and understands these general terms and conditions.~~

~~Article 9~~ARTICLE 8

MISCELLANEOUS

~~9.18.1~~ Entire Agreement. This Agreement constitutes and contains the entire agreement between the Parties hereto with respect to the transactions contemplated hereby and supersedes any prior oral or written understanding or agreement of the Parties with respect to the transactions contemplated hereby.

~~9.28.2~~ Amendment. The Parties may, by mutual agreement in writing, amend this Agreement in any respect.

~~9.38.3~~ Waiver. The Parties hereto may, from time to time, waive any of their rights under this Agreement unless such waiver is contrary to law, provided that any such waiver shall be in writing and signed by the Party making such waiver.

~~9.48.4~~ Counterparts. This Agreement may be executed in one or more counterparts, any one of which need not contain the signatures of more than one Party, but all of which when taken together shall constitute one and the same instrument, notwithstanding that all Parties have not signed the same counterpart hereof.

~~9.58.5~~ Headings. The article and section headings contained in this Agreement are inserted as a matter of convenience and shall not affect in any way the construction or terms of this Agreement.

~~9.68.6~~ Further Assurances. Each of the Parties shall execute such other instruments, documents and other papers and shall take such further actions as may be reasonably required or desirable to carry out the provisions hereof and to consummate the transactions contemplated hereby.

~~9.78.7~~ Survival. The representations, warranties, covenants and agreements made herein or in any certificate or document executed in connection herewith shall survive the execution and delivery hereof or thereof, as the case may be, and all statements contained in any certificate or document delivered by any party hereto shall be deemed to constitute a representation and warranty made herein by such party.

9.88.8 Governing Law. The laws of the State shall govern this Agreement, the interpretation thereof and any right or liability arising hereunder. Any action or proceeding to enforce or interpret any provision of this Agreement shall be brought, commenced or prosecuted in the courts of the State located in the County of Sacramento. All parties expressly assert that Sacramento County is not a forum inconvenience.

9.98.9 Compliance with Laws. At all times during the performance of this Agreement by the ~~Participating County of its obligations hereunder, the Participating County~~ Parties, they shall strictly comply with all applicable governmental, administrative and judicial laws, ordinances, rules, regulations, orders, covenants and findings, including, without limitation, all applicable environmental laws and regulations.

9.108.10 Partial Invalidity. If any provisions of this Agreement are found by any competent authority to be void or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.

9.118.11 Notices. All notices and other official communications between the parties shall be in writing and shall be given by hand delivery or by recognized overnight courier who maintains verification of delivery (deemed to be duly received on the date delivered), or by registered mail, postage prepaid, return receipt requested (deemed to be duly received five (5) days after such mailing) or by telecopy (deemed to be received on the date sent providing that the facsimile was properly addressed and disclosed the number of pages transmitted on its front sheet and that the transmission report produced indicates that each of the pages of the facsimile was received at the correct facsimile number) to each of the respective parties as follows:

If to the Board:

Attention:
Facsimile:

If to the Department:

Attention:
Facsimile:

If to CSA

Attention:
Facsimile:

If to the Participating County:

Attention:
Facsimile:

or to such other address or number for any of the parties hereto as may from time to time be designated by notice given by such party to the other parties in the manner hereinabove provided.

| 9.128.12 Force Majeure. None of the Parties shall be liable or responsible for any delay or failure resulting from (and the times for performance by the parties hereunder shall be extended by the duration of) causes beyond the control of, and without the fault or negligence of, such party, including without limitation acts of God, acts of the public enemy, acts of war or terrorism, acts of the government or governmental or quasi-governmental agency or instrumentality, significant market disruptions, fires, floods, epidemics, quarantine restrictions, strikes, civil commotion, casualties, embargoes, severe or inclement weather beyond that usually encountered in _____ County, California, shortages in labor or materials, or similar cause.

| 9.138.13 Exculpation. Notwithstanding anything to the contrary contained in this Agreement, in any Bond Document, Project Document or other certificate, agreement, document or instrument executed in connection with the AB 900 Jail Construction Financing Program, the liability of the Board hereunder shall be limited to and satisfied solely out of proceeds of the Interim Loan, if any, or the Bonds, if any, permitted to be used for such purpose. Except as provided above, the Participating County shall not have the right to obtain payment from the Agencies or from any other assets of the Agencies. The Participating County shall not enforce the liability and obligation of the Agencies to perform and observe the obligations contained in this Agreement, or any other documents delivered in connection herewith in any action or proceeding wherein a money judgment in excess of -the available proceeds of the foregoing sources shall be sought against the Agencies.

| 9.148.14 Benefits of this Agreement Limited to the Parties. Except for the Parties to this Agreement, nothing contained in this Agreement, expressed or implied, is intended to give to any person (including without limitation the owners of the Bonds) any right, remedy or claim under or by reason hereof. Any agreement or covenant required herein to be performed by or on behalf of any Party shall be for the sole and exclusive benefit of the other Parties to this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has executed this Agreement, either individually or by an authorized representative, on the day and year first set forth above.

STATE PUBLIC WORKS BOARD OF
THE STATE OF CALIFORNIA

By: _____
[Name]
[Assistant] Administrative Secretary

DEPARTMENT OF CORRECTIONS AND
REHABILITATION OF THE STATE OF
CALIFORNIA

By: _____
[Name]
[Title]

STATE CORRECTIONS STANDARD
AUTHORITY

By: _____
[Name]
Executive Director or Authorized Designee

COUNTY OF _____

By: _____
[Name]
[Title]

EXHIBIT A

PROJECT SCOPE, COST AND SCHEDULE DESCRIPTION

[Include narrative description of Project per Section 4.1]

EXHIBIT B
FORM OF GROUND LEASE

EXHIBIT C

FORM OF RIGHT OF ENTRY FOR CONSTRUCTION

EXHIBIT D
FORM OF FACILITY SUBLEASE

EXHIBIT E-1

DESCRIPTION OF PARTICIPATING COUNTY FUNDING

Cash (hard) Match

EXHIBIT E-2

DESCRIPTION OF PARTICIPATING COUNTY FUNDING

In-kind (soft) Match